

Michigan Senate Reforms, Restructuring and Reinventing Committee

Scott G. Smith's May 4, 2011, Testimony on SB 8, the "Municipal Partnership Act"

I would like to share a bit of my background to put my testimony in some context. I am a member of the Clark Hill law firm and chair its municipal practice group. I have served as a municipal attorney for over 30 years. I currently serve as general counsel for Allegan, Grand Haven, Mount Pleasant, Otsego, Plainwell, Sparta and South Haven and as special counsel for Grand Rapids, Greenville, Lake Odessa, Portland and Wyoming. I have also worked with Benton Harbor, Cedar Springs, Grant, Kentwood, Lansing, Macomb County, St. Joseph, Wayne County and others. Therefore, I have worked with municipalities of varying sizes and other demographic features.

As a result, I have worked on scores of intergovernmental agreements involving all types of joint endeavors. I have also participated in negotiations that failed to produce agreements.

Curtis Holt has already described the impetus for the draft of the Municipal Partnership Act. So, I will not repeat that information.

There were several objectives that are addressed by the proposed Municipal Partnership Act.

First, the Municipal Partnership Act eliminates the need to analyze myriad statutes (Curtis Holt referred to 77) to find which one comes the closest to allowing the desired structure and relationship with the fewest adverse consequences. Currently a patchwork of statutes allow some local government cooperation. Some address only particular types of services such as recreation, emergency services, water supply, refuse collection, libraries, sanitary sewers, drains, and so forth. Some require limiting the type of entity that can be the basis for the joint endeavor. Some allow formation of a separate entity and some do not permit formation of a separate entity. Some mandate the structure, number, manner of appointment and representation on the board or other body overseeing the joint endeavor which makes it more difficult to tailor the structure to the local situation. Some provide a source of funding but restrict its use or provide funding sources that are not acceptable to all. Some allow only special assessments while some allow millages under very limited circumstances. Some require statutes certain circumstances or conditions before they can be employed. Some limit the types of entities that can be part of the arrangement. Some, for example, do not allow contracting with state agencies, with counties, or with Indian tribes.

Second, the proposed Municipal Partnership Act would override limiting provisions of local charters and ordinances. Some charters require certain departments, certain administrative positions, and even some staffing levels. They therefore would require a charter amendment to even begin negotiating a cooperative relationship with another local government. Some charters limit the use of certain millages to funding only the operations of that municipality, not a joint operation.

Third, the Municipal Partnership Act would prohibit a referendum on a proposed collaborative or cooperative arrangement. In this way, it is like the venerable Revenue Bond Act, 1933 PA 94, as amended. Currently, with some intergovernmental cooperation statutes, the prospect of a

referendum can hinder discussions, especially if the subject matter is difficult to explain or easy to demagogue. Negotiations are impaired when one group threatens a referendum even before discussions begin. A referendum can undo months or even years of negotiations. If the issue is complicated, it can be very hard for voters to be informed.

Fourth, the Municipal Partnership Act would eliminate the prospect of a recall. Like a threatened referendum, the threat of a recall can be intimidating to local officials. Special elections to address recalls are also costly.

Fifth, the Municipal Partnership Act would allow for communities to enter into agreements for joint endeavors without first collective bargaining. It would remove any requirements to collectively bargain about whether or not to enter into an agreement for a joint endeavor and with whom the agreement is made. Those employed under the joint endeavor would still have all their collective bargaining rights. Act 312 would remain as it is.

We have recently have had good, candid and encouraging discussions with some labor representatives in an effort to craft language in the proposed Municipal Partnership Act and the companion SB 9 that we find mutually reasonably satisfactory. We still have some work to do on that. But, we believe that, with another week, we can find a mutually satisfactory way of dealing with the varying concerns.

Sixth, the Municipal Partnership Act would make it clear that the resulting employer would not require payment of highest wages and benefits. We do not believe current law imposes that requirement. But, there is a difference of opinion as to whether some of the current statutes require that. This would at least avoid a similar dispute.

Seventh, the Municipal Partnership Act would provide a lot of flexibility in the framework because it does not dictate terms. Instead it requires what subjects must be addressed by an agreement.

Eighth, the Municipal Partnership Act would similarly provide flexibility in funding. It would allow the use of current millage levies and funding sources. It would also allow for a millage to be levied if approved by the voters.

Ninth, the Municipal Partnership Act would make it clear it is separate authority *in addition* to whatever other statutory authorization may exist. It won't be limited by other statutes.

As has already been indicated, this statute is not perfect. It was initially proposed as a pilot program for Kent County to show how it could work. Given the Governor's efforts to encourage municipal restructuring, statewide application is more appropriate.

In addition, we appreciate the collaboration with union representatives. We have a bit more work to do in that collaboration and believe we can find mutually acceptable language to reasonably address concerns.

Thank you for the opportunity to address the Committee.